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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

In re S.P., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

S.P.,

Defendant and Appellant.

A122094

(Contra Costa County
Super. Ct. No. J0701747)

S.P. committed vandalism and was adjudged a ward of the juvenile court. He appeals to challenge a condition of probation that requires him to stay away from a specified area of Concord on the ground that the condition unconstitutionally restricts his right to travel. We hold that this “gang area stay away” provision was a lawful condition of probation, and affirm the orders of the juvenile court.

FACTUAL AND PROCEDURAL BACKGROUND

S.P. was convicted of vandalism and adjudicated a ward of the juvenile court pursuant to Welfare and Institutions Code section 602. The district attorney concurred with the probation officer’s recommended disposition that S.P. be committed to the boys’ ranch for six months based on S.P.’s history of prior referrals, “what appear[ed] to be a significant substance abuse problem,” and “the association that he maintains with the Sure[ñ]o gang.” S.P.’s attorney said he denied gang membership at the dispositional

hearing. But S.P. later told the admitting officer at the county jail and his probation officer that he was a member of the Sureño street gang, and he does not challenge his identification as a gang member in this appeal.

The court instead rejected a commitment to boys' ranch and placed S.P. on probation with conditions that included a prohibition on associating with known gang members or knowingly engaging in gang activities, and a curfew of 8:00 p.m. on school nights and 10:00 p.m. on other nights.

A few months later, S.P. was arrested for several possible probation violations. At a probation revocation hearing, S.P. admitted a charge that he violated his 10:00 p.m. curfew. Additional allegations that he violated probation by entering a known gang area and associating with known gang members were dismissed, with the understanding that they could be considered at disposition.

Again, S.P.'s probation officer recommended six months at the boys' ranch, and the imposition of additional conditions of probation to require that S.P. not be in any known gang area, as directed by probation, and that he not associate with J.R., reportedly a gang member observed with S.P. in violation of his probation. The court followed the probation officer's recommendations, and directed the officer to "have specific street maps printed out from one of the web sites and delineate areas, you have specific streets and borders, so that it's very clear where [S.P.] has to stay out of." When the juvenile court modified S.P.'s conditions of probation to require that he stay away from J.R. and from designated gang areas, S.P.'s trial counsel stated "there needs to be a reasonable basis for certain stay-away orders in terms of people and place. And I don't think that what is currently put forward, all the people that [S.P.] has been told to stay away from, has an adequate basis to justify a proper order."

The court instructed the probation officer to provide S.P. with specific street maps that indicated the areas he was required to avoid, and advised counsel: "you're entitled to see what probation has instructed him not to do in terms of staying out of these areas, if you believe there's an issue there, I think you should bring it back to the court and we can look at it." S.P. timely appealed.

DISCUSSION

A. Waiver Issue

The Attorney General contends S.P. waived his claim that the “gang area stay away” condition is unconstitutional because he failed to object on that ground in the trial court. S.P. does not contend that his claim presents an exception to the forfeiture doctrine because it involves a pure question of law that can be resolved without reference to the sentencing record. (See *In re Sheena K.* (2007) 40 Cal.4th 875, 887-889.) Instead, S.P. argues that if his counsel’s objection is considered to be inadequate to preserve his constitutional claim, he was denied effective assistance of counsel. To prevail on this argument, S.P. must show both the absence of a reasonable tactical explanation for counsel’s failure to object, and that the objection would have been meritorious. (*People v. Mattson* (1990) 50 Cal.3d 826, 876; *People v. MacKenzie* (1995) 34 Cal.App.4th 1256, 1272.)

The Attorney General suggests that counsel’s failure to object to the “gang area stay away” condition on constitutional grounds is adequately explained by the fact that S.P. had previously signed a list produced by his probation officer of “people not to associate with” and “areas not to go [to].” We will not infer that S.P. waived a constitutional objection to the court’s later imposition of a “gang area stay away” prohibition, just because he acknowledged receipt of a list of prohibited associates and areas. (See *In re Pedro Q.* (1989) 209 Cal.App.3d 1368, 1370-1371 [probation officer may not unilaterally impose condition restricting minor’s travel, even where minor placed his initials next to the directive].) We therefore consider, and reject, S.P.’s constitutional claim on the merits.

B. Right to Travel Claim

“The juvenile court has wide discretion to select appropriate [probation] conditions and may impose ‘any reasonable condition that is ‘fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.’ ” ” (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 889; see Welf. & Inst. Code, § 730, subd. (b).) “We review the judgment for a manifest abuse of discretion.” (*In re*

G.V. (2008) 167 Cal.App.4th 1244, 1250.) “A condition of probation will not be held invalid unless it ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality’ ” (*People v. Lent* (1975) 15 Cal.3d 481, 486.) A probation condition that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court if it is tailored to meet the probationer’s needs. (See *In re Tyrell J.* (1994) 8 Cal.4th 68, 81-82; *In re Byron B.* (2004) 119 Cal.App.4th 1013, 1016; *In re Antonio C.* (2000) 83 Cal.App.4th 1029, 1033-1034; *In re Binh L.* (1992) 5 Cal.App.4th 194, 203; *In re Laylah K.* (1991) 229 Cal.App.3d 1496, 1500, 1502; see also *In re Sheena K.*, *supra*, at p. 889.)

In re Michael D. (1989) 214 Cal.App.3d 1610 upheld a probation condition barring a minor from “ ‘any known gang gathering area.’ ” (*Id.* at pp. 1616-1617.) The minor’s argument that the condition restricted his constitutional right to travel was rejected and the court concluded “the condition is not ‘so sweeping and so punitive that it becomes unrelated to rehabilitation.’ ” (*Id.* at p. 1617; see also *In re Antonio R.* (2000) 78 Cal.App.4th 937, 939, 941-942 [upholding probation condition that required minor “to stay out of Los Angeles County unless accompanied by a parent or with prior permission from the probation officer”]; *In re Laylah K.*, *supra*, 229 Cal.App.3d at pp. 1499, 1502-1503 [upholding prohibition on “minors’ presence at any known gathering area of the Crips gang”].) We reach the same conclusion.

S.P. contends that his right to travel is unduly infringed by the “gang area stay away” condition because it was not “narrowly tailored and reasonably related to [his] reform and rehabilitation.” But S.P. is an admitted gang member. The court’s order covered a limited area related to S.P.’s criminal conduct, and there is no showing that the restriction imposed a severe hardship on S.P. The juvenile court invited S.P. to review the areas to be designated by the probation officer, and “if you believe there’s an issue there, . . . bring it back to the court and we can look at it.” The record does not indicate that S.P. expressed any such concerns to the court. While S.P. claims that his probation

officer was aware that S.P.'s grandmother lived within the prohibited area, that fact was relied upon to impeach the probation officer's testimony that S.P. had no valid reason to be in the area where he was found. S.P. never contended in the juvenile court that the condition would impose undue hardship on him, or would prevent him from entering the prohibited areas for legitimate purposes. Moreover, S.P. does not refute the Attorney General's argument that "nothing in the restriction precludes appellant from obtaining his probation officer's permission to be in the restricted area for these purposes." (See *In re Antonio R.*, *supra*, 78 Cal.App.4th at p. 942.)

S.P. relies on *In re White* (1979) 97 Cal.App.3d 141 to argue the "gang area stay away" condition is invalid. In *White*, the defendant was convicted of soliciting prostitution and was required as a condition of probation "[n]ot to be present within [certain] designated areas at any time, day or night" (*Id.* at p. 143.) The proscribed areas included the defendant's home, the homes of her friends or relatives, and a Greyhound bus depot. (*Id.* at p. 144.) The defendant also testified "it was most difficult for her to take her children to the local park and zoo because it bordered one of the [prohibited areas]." (*Ibid.*) The appellate court determined the stay away condition imposed in *White* was "unduly harsh and oppressive" and that it was "simply too broad," with "little factual nexus between the proscribed activity and future criminality." (*Id.* at p. 147.) But *White* involved an adult defendant in a case filed under criminal, not juvenile, law. S.P.'s reliance on *White* is misplaced.

Probation conditions imposed in juvenile cases may properly be more restrictive than those imposed on adults "in light of the unique rehabilitative function of the juvenile court." (*In re Michael D.*, *supra*, 214 Cal.App.3d at pp. 1616, 1617 [prohibiting a minor's presence " 'in any known gang gathering area' " did not violate the standard enunciated in *White*]; see also *In re Sheena K.*, *supra*, 40 Cal.4th at pp. 889-890; *In re Antonio R.*, *supra*, 78 Cal.App.4th at p. 941.)

Here, S.P. admits his affiliation with a set of the Sureños criminal street gang, and his probation history shows his persistent association with gang members. S.P. has not

demonstrated that the “gang area stay away” probation condition imposed on him was an abuse of the court’s discretion, or violated his constitutional right to travel.

The California Department of Justice estimates gangs in California to have between 250,000 and 420,000 members. (See Cal. Dept. of Justice News Release June 6, 2007, Bureau of Narcotic Enforcement Fact Sheet.) The Department reports that criminal activity perpetrated by these gangs presents a severe and persistent threat to public safety and to the members themselves. (Rep.Cal.Atty.Gen. (2005) Organized Crime in California.) In 2007, there were reportedly 469 homicides in California where gang affiliation was identified as a contributing circumstance, and approximately 58 percent of homicide victims between the ages of five and 17 died in gang-related incidents. (Cal. Dept. of Justice, Bur. of Crim. Information & Analysis, Homicide in California, ann. rep. 2007, pp. 70, 72.) In cases like this one, the nexus between a stay away order and the ward’s best interest is manifest.

DISPOSITION

The orders of the juvenile court are affirmed.

Siggins, J.

We concur:

Pollak, Acting P.J.

Jenkins, J.